

1 IT IS FURTHER ORDERED that Smith Bagley, Inc. shall promptly notify the
2 Arizona Corporation Commission of any changes in its cellular geographic
3 service area, as authorized by the Federal Communications Commission, by filing
4 for inclusion in its tariff revised service area maps, in accordance with the
5 provisions of A.R.S. §40-367.

6 IT IS FURTHER ORDERED that Smith Bagley, Inc. shall file with the Arizona
7 Corporation Commission and serve upon all parties of record herein, an initial
8 effective price sheet covering all tariffed services, at least 15 days prior to
9 initiating service.

10 IT IS FURTHER ORDERED Smith Bagley, Inc. shall amend its proposed tariff
11 consistent with our discussion, findings and conclusions hereinabove and shall
12 include in its amended tariff a map of its cellular geographic service area, as
13 authorized by the Federal Communications Commission.

14 IT IS FURTHER ORDERED that said tariff, as modified, shall be filed with
15 the Arizona Corporation Commission on or before August 31, 1990.

16 IT IS FURTHER ORDERED that Smith Bagley, Inc. shall be, and hereby is,
17 authorized and directed to follow the Uniform System of Accounts set forth in
18 47 CFR Part 32, as of the effective date hereof, and not including any later
19 amendments or editions.

20 IT IS FURTHER ORDERED that Smith Bagley, Inc. shall maintain separate
21 books, records and accounts for its wholesale cellular revenues, expenses,
22 assets and liabilities.

23 IT IS FURTHER ORDERED that Smith Bagley, Inc. shall file herein its
24 interconnection agreement with Contel of the West, Inc. and all future
25 interconnection agreements it may enter into within 30 days of the date of the
26 agreement is signed.

27 IT IS FURTHER ORDERED that Smith Bagley, Inc. shall file herein the
28 technical descriptions of the type I and II interfaces at the time it files the

1 interconnection agreement with Contel of the West. Inc.

2 IT IS FURTHER ORDERED that Smith Bagley, Inc. shall file herein any
3 agreement entered into by it or FGI Cellular Management, Inc. for maintenance
4 of its cellular telephone facilities in Arizona.

5 IT IS FURTHER ORDERED that Smith Bagley, Inc. shall file herein a copy of
6 any application for expansion of its cellular geographic service area at the
7 time it is filed with the Federal Communications Commission.

8 IT IS FURTHER ORDERED that in the event Smith Bagley, Inc. does business
9 under an assumed name, it shall file herein and with its tariff a notice of
10 that name.

11 IT IS FURTHER ORDERED that Smith Bagley, Inc. shall file herein the toll
12 free telephone number of the headquarters of FGI Cellular Management, Inc.

13 IT IS FURTHER ORDERED that this Decision shall become effective
14 immediately.

15 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

16
17 Chairman
CHAIRMAN

16
17 Commissioner
COMMISSIONER

16
17 Commissioner
COMMISSIONER

18 IN WITNESS WHEREOF, I, JAMES MATTHEWS, Executive
19 Secretary of the Arizona Corporation Commission,
20 have hereunto set my hand and caused the
21 official seal of this Commission to be affixed
22 at the Capitol, in the City of Phoenix, this 22
23 day of AUGUST, 1990.

22 James Matthews
JAMES MATTHEWS

23 Executive Secretary

24 DISSENT

25 CKH/djp

file

BEFORE THE ARIZONA CORPORATION COMMISSION

DOCKETED

JUL 19 1990

DOCKETED BY

[Signature]

DOCKET NO. U-2561-90-151

DECISION NO. 57035

OPINION AND ORDER

IN THE MATTER OF THE APPLICATION OF)
THE CHRONICLE PUBLISHING COMPANY,)
CHRONICLE CELLULAR DIVISION, FOR A)
CERTIFICATE OF PUBLIC CONVENIENCE AND)
NECESSITY TO CONSTRUCT AND OPERATE A)
CELLULAR SYSTEM TO SERVE THE ARIZONA)
5-GILA RURAL SERVICE AREA AND FOR)
APPROVAL OF ITS WHOLESALE TARIFF.)

DATE OF HEARING: July 3, 1990

PLACE OF HEARING: Phoenix, Arizona

PRESIDING OFFICER: Cheryl K. Hachman

APPEARANCES: BROWN & BAIN, by Mr. Lex J. Smith and Mr. Stephen A. Owens, on behalf of the Applicant, The Chronicle Publishing Company, Chronicle Cellular Division;

JOHNSON, MAYNARD, GRANT & PARKER, by Mr. Michael M. Grant, on behalf of the Gila River Cellular General Partnership;

SNELL & WILMER, by Mr. Bruce P. White and Mr. Thomas L. Munaw, for Metro Mobile CTS of Phoenix, Inc.; and

Ms. Elizabeth A. Kusibab, Attorney, Legal Division, Arizona Corporation Commission, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On May 29, 1990, The Chronicle Publishing Company, Chronicle Cellular Division ("Chronicle"), a Nevada Corporation, filed with the Arizona Corporation Commission ("Commission") an application for a certificate of public convenience and necessity ("certificate") authorizing it to construct, operate and maintain cellular radio facilities for the provision of telephone service, as a common carrier, in an area defined by the Federal

1 Communications Commission ("FCC") as the Gila, Arizona Rural Service Area, RSA
2 AZ-5, Cellular Market No. 322 (the "Gila RSA") which consists of Gila and Pinal
3 Counties, Arizona. Chronicle also asked for approval of its initial tariff for
4 wholesale service to other cellular common carriers and resellers. In
5 accordance with A.R.S. § 40-282(C), on June 15, 1990, the Commission issued a
6 notice of hearing setting July 3, 1990 as the hearing date on Chronicle's
7 application. Notice of the hearing was promptly published in a newspaper of
8 general circulation in Gila and Pinal Counties and, by Procedural Orders issued
9 herein on June 27, 1990 and June 28, 1990, the Presiding Officer granted
10 applications to intervene filed by Metro Mobile CTS of Phoenix, Inc. ("Metro
11 Mobile") (over Chronicle's objection) and the Gila River Cellular General
12 Partnership (the "Gila Partnership"). At the conclusion of the hearing, the
13 matter was adjourned pending submission by the parties of proposed orders to
14 the Presiding Officer and the issuance of a Recommended Decision.

15 DISCUSSION

16 The FCC has created a regulatory scheme for cellular service that
17 anticipates two competing service providers in each market: a non-wireline, or
18 Type A, carrier; and a wireline, or Type B, carrier. Chronicle is the holder
19 of the non-wireline carrier construction permit issued by the FCC authorizing
20 the establishment of a cellular system to serve the Gila RSA. Metro Mobile is
21 the holder of the non-wireline cellular certificate for the Phoenix
22 metropolitan service area ("MSA") and is affiliated with Tucson Cellular
23 Telephone Company ("TCTC"), the certificated non-wireline carrier in the Tucson
24 MSA. The Gila Partnership is the FCC licensee which will be affiliated with
25 the Type B cellular carriers in Phoenix and Tucson: US West NewVector Group,
26 Inc. ("NewVector") and the Tucell Partnership ("Tucell"), and it will be filing
27 an application for a certificate. It is presently anticipated that Chronicle
28 and the Gila Partnership will provide competing cellular service along a

1 portion of Interstate 10 between Phoenix and Tucson, so that, in addition to
2 service in areas such as Casa Grande and Florence, cellular telephone service
3 will be provided to the customers of Metro Mobile, TCTC, NewVector, Tucell, and
4 other cellular carriers, while they are traveling between the two metropolitan
5 areas.

6 The FCC issued the non-wireline cellular construction permit for the Gila
7 RSA to Chronicle Cellular Company on March 13, 1989 and, to reflect a corporate
8 reorganization, subsequently reissued the permit to Chronicle Publishing
9 Company. In issuing the non-wireline cellular construction permit, the FCC
10 determined that there was a public need for a non-wireline cellular carrier in
11 the Gila RSA and effectively determined that Chronicle is legally, financially,
12 technically and otherwise qualified to provide cellular service. The FCC's
13 construction permit expires on September 13, 1990 and Chronicle has requested
14 expedited consideration of its application herein.

15 The Commission's Utilities Division ("Staff") recommended approval of
16 Chronicle's application, subject to the filing of amendments to the proposed
17 tariffs specifying roaming charges for "affiliated" carriers (carriers with
18 whom Chronicle may contract) or, alternatively, filing with the Commission any
19 contracts entered into with such carriers. The contract rate with an
20 "affiliated" carrier would be made available to all similarly situated carriers
21 entering into such agreements. Additionally, Staff requested that the
22 interconnection agreement with the land-line telephone public service
23 corporation be filed with the Commission. Applicant agreed with Staff's
24 recommendations.

25 The principal areas of disagreement were between Metro Mobile and
26 Chronicle and centered around the issues of price discounts, minimum resale
27 obligations (both in terms of phone numbers and minutes of use), and especially
28 "roamer" rates. Gila Partnership joined Metro Mobile's opposition to the

1 proposed requirement of a minimum 100-number block of numbers for resellers of
2 Chronicle service, with a corresponding minimum of 200 hours of peak period
3 usage.

4 1. Filing an Initial Price Sheet

5 Metro Mobile has faulted Chronicle for failing to provide it and other
6 potential resellers with an initial price sheet indicating the level of
7 discount, if any, to be applied to its authorized maximum rate for each
8 service. Although the Commission fully understands that Metro Mobile can not
9 reasonably judge the viability of the resale market in the Gila RSA in the
10 absence of such a price sheet, we find this to be more of a business problem
11 than a legal impediment to certification. Other cellular providers (including
12 Metro Mobile itself) have been permitted to receive certification without an
13 initial price sheet.

14 In prior instances, the Commission has, however, required an initial price
15 sheet 120 days before initiation of service by a cellular provider. See
16 Decision Nos. 53740 (September 14, 1983); 54231 (November 8, 1984); and 54377
17 (February 14, 1985).¹ This requirement is simply not feasible in this
18 instance. Further, although compliance with the general statutory 30-day
19 notice period for tariff filings might be feasible, Chronicle's proposed
20 wholesale tariff permits changes in the level of the discount on 14 days notice
21 (as do the tariffs of all of the other wholesale cellular carriers). We
22 believe that the 14-day notice period contemplated by Chronicle's proposed
23 tariff should be followed and will therefore require that Chronicle file an
24 initial effective price sheet with this Commission at least 14 days prior to
25 its commencement of operations.

26
27 1. TCTC, Metro Mobile's Tucson affiliate, submitted its original price sheet
28 at the time of certification. See Decision No. 54758 (November 13, 1985).

2. Minimum Blocks of Numbers and Usage

Chronicle acknowledged at hearing that it was not reasonable to expect resellers to take a minimum of 100 numbers and 200 hours of peak usage when the total expected number of cellular end-users for the first year was only 35. It agreed to reduce the minimum to 25 numbers and 50 hours. This is satisfactory to Gila Partnership, but Metro Mobile argued that, at least initially, no minimums should be required.

If one were to take the minimums presently in effect for wholesale cellular providers in the Tucson and Phoenix MSAs as compared with the size of those resale markets, and then proportionately reduce such minimums to match Chronicle's estimates of the potential "home market" in the Gila RSA, it is doubtful that any minimum could be justified. However, the Commission is aware that if every potential retail subscriber could also buy from the wholesale tariff, there would then be little practical distinction between the wholesale service offered by Chronicle and the retail provision of cellular service.

A reasonable compromise based on the testimony of Metro Mobile witness Riley would be an initial minimum block of 10 numbers with a corresponding minimum of 20 hours peak usage. Such a minimum could be increased to 25 numbers and 50 hours of usage during Chronicle's second year of operation. Any further increase in the minimum after two years will be considered by the Commission upon an appropriate application by Chronicle.

3. "Roamer" Rates

The most controversial issue in this proceeding involves Chronicle's proposed "roamer" rates to be charged other carriers or resellers for any service Chronicle provides to their end-users who travel through the Gila RSA. Chronicle is requesting a charge of \$.90 per minute plus a \$2.50 per customer per day surcharge ("per diem surcharge"). Metro Mobile contended that these rates:

- 1) were not based on the cost of providing service;
- 2) were substantially higher than any rates for "roamer" service previously authorized by the Commission; and
- 3) would place Metro Mobile at a substantial competitive disadvantage vis-a-vis its wireline competitor in the Phoenix/Tucson MSAs.

7 In view of the evidence provided in this proceeding, Metro Mobile's concerns
8 about Chronicle's proposed roamer rates are understandable. Essentially,
9 cellular telephone service in the Gila RSA will be a complementary service to
10 cellular service in the Phoenix and Tucson MSAs. As a result, most of
11 Chronicle's business will be providing roamer service to Phoenix and Tucson
12 cellular carriers and resellers who will make that service available to the
13 end-users.

14 Evidently, in order to maximize its revenues during its initial start-up
15 years (when it will be experiencing operating losses), Chronicle has chosen to
16 maximize its revenues by maximizing its roamer rates, based on value of service
17 principles (not the estimated cost of providing service), rather than
18 maximizing revenues by minimizing its rates and stimulating demand. As a
19 result of this approach, Chronicle's proposed roamer rates are significantly
20 higher than those approved by the Commission in the Phoenix and Tucson MSAs,
21 where rates vary from a flat \$.60 per minute (NewVector) to Metro Mobile's \$.70
22 (on peak) and \$.60 (off peak) charges. None of the carriers in either MSA have
23 filed a per diem surcharge.

24 Metro Mobile's competitive problems arise from the fact that the wireline
25 providers in both the Phoenix and Tucson MSAs are affiliated with Gila
26 Partnership. Thus, as the evidence herein suggests, they are likely to receive
27 more favorable "roamer" rates than those being offered by Chronicle to Metro
28 Mobile. Even if the Gila Partnership's rates were comparable to those proposed

1 by Chronicle, Metro Mobile's competitors would, in large part, simply be moving
2 their money from one pocket to another. Further, unlike retail subscribers in
3 a cellular provider's "home market", "roamers" are, for all practical purposes,
4 "captive" customers once away from home. Subscribers to non-wireline carriers
5 in Phoenix (i.e., MetroMobile) must use the non-wireline carrier in the Gila
6 RSA (Chronicle) unless: 1) they are willing and able to reprogram their
7 cellular equipment every time they leave Maricopa County and then change it
8 back upon their return; and 2) the Gila Partnership is willing to sign a
9 "roamer" agreement with Metro Mobile.

10 Thus, it appears that, given the market conditions and Chronicle's
11 proposed roamer rates, Metro Mobile will either purchase roamer service from
12 Chronicle, pass the cost of that service on to the end-users and lose customers
13 to the Type B carriers (NewVector, the Gila Partnership and Tucell) or, in
14 order to remain cost competitive, will purchase roamer service from the Gila
15 Partnership and lose customers due to the inconvenience of switching to a Type
16 B carrier in the Gila RSA. Although, due to the Gila Partnership's affiliation
17 with NewVector and Tucell, Metro Mobile believes the latter alternative is
18 remote, as a certificated common carrier, the Gila Partnership would be
19 required by law to provide roamer service to Metro Mobile in a
20 non-discriminatory manner. In any event, it appears that Chronicle has lost
21 sight of the fact that its fortunes are largely dependent upon the business
22 success of Metro and TCTC: if they lose customers to the Type B carriers due
23 to the cost of Type A roamer service in the Gila RSA, Chronicle will also lose.

24 However, while it appears that Chronicle's proposed roamer rates will give
25 the Type B carriers a competitive advantage and may be self-defeating, they are
26 initial rates for a competitive service. Given the standards used to evaluate
27 such rates (e.g., no "fair value" determination is required, actual cost of
28 service support is not available and greater reliance is placed on value of

1 service pricing), we can not find that Chronicle's proposed rates are unjust
2 and unreasonable as a matter of law. Therefore, they will be approved.

3 * * * * *

4 Having considered the entire record herein and being fully advised in the
5 premises, the Commission finds, concludes, and orders that:

6 FINDINGS OF FACT

7 1. On May 29, 1990, Chronicle filed an application for a certificate
8 authorizing it to construct, operate and maintain cellular radio facilities to
9 provide telephone service as a common carrier in the Gila RSA.

10 2. Chronicle is a Nevada corporation in good standing in the State of
11 Nevada and has filed the necessary papers to qualify as a foreign corporation
12 authorized to do business in Arizona.

13 3. Notice of Chronicle's application and the hearing thereon was
14 published in a newspaper of general circulation in the Gila RSA on June 20,
15 1990.

16 4. The FCC has previously found that a public need exists for cellular
17 telephone service throughout the country, including the Gila RSA.

18 5. On March 13, 1989, the FCC issued a construction permit authorizing
19 construction of cellular facilities in the Gila RSA to Chronicle Cellular
20 Company, and it subsequently reissued the permit in Chronicle's name.

21 6. Under the FCC's regulations, Chronicle must obtain a certificate,
22 complete construction of a cell site and begin providing service in an
23 FCC-approved cellular geographic service area ("CGSA") within the Gila RSA by
24 September 13, 1990.

25 7. Initially, Chronicle intends to provide cellular telephone service
26 within approximately a 10-mile radius of Casa Grande, Arizona and to
27 subsequently expand its coverage by approximately another 20 miles southeast
28 along Interstate 10, and to provide service in Florence, Arizona and vicinity.

1 8. Due to the nature of the Gila market, Chronicle expects that it will
2 have few retail customers and that most of its revenues will be generated by
3 wholesale service, particularly roamer service to other cellular carriers.

4 9. Chronicle has agreed to provide wholesale service to the Gila
5 Partnership and will enter into an NXX placement agreement to meet the
6 Partnership's service requirements until it can construct its cellular system.

7 10. Chronicle estimates that it will provide service through its
8 wholesale customers to approximately 35 retail customers during the first year
9 of operation and that by the end of the fifth year it will provide service to
10 approximately 520 customers.

11 11. Chronicle has developed plans for design, maintenance and operation
12 of its cellular system and made preliminary arrangements for the location of
13 cell sites and a mobile telephone switching office.

14 12. Chronicle will not require a franchise for the use of public
15 streets, highways and rights-of-way for cellular facilities.

16 13. For the land-line portion of its service (local, intralata,
17 interlata and interstate) Chronicle has entered into an interconnection
18 agreement with The Mountain States Telephone and Telegraph Company, dba US West
19 Communications ("US West"), and will pay access charges to US West pursuant to
20 that agreement.

21 14. If granted a certificate, Chronicle will familiarize itself with the
22 statutes governing public service corporations and the rules and regulations of
23 this Commission and intends to abide by them.

24 15. If the Commission permits it to do so, Chronicle will maintain its
25 books and records in accordance with the FCC's new Uniform System of Accounts
26 ("Part 32").

27 16. If granted a certificate, Chronicle will file annual reports and
28 maintain its records so that its cellular wholesale revenues, expenses and

1 other pertinent data can be readily determined when necessary.

2 17. If granted a certificate, Chronicle will begin construction of its
3 cellular facilities immediately so that it can complete construction before its
4 FCC construction permit expires.

5 18. Chronicle is a closely-held, family-owned company which is engaged
6 in newspaper publishing and owns and operates television stations and cable
7 television systems.

8 19. For technical expertise in constructing and operating a cellular
9 telephone system, Chronicle has entered into a management contract with United
10 States Cellular Corporation, the eighth largest cellular company in the nation,
11 which currently operates in 33 MSAs and is constructing cellular systems in 19
12 MSAs.

13 20. Chronicle has assets in excess of \$250 million, revenues
14 significantly in excess of \$250 million and unused lines of credit of more than
15 \$250 million, and it intends to finance construction and initial operation of
16 its cellular telephone system entirely with internally generated equity funds.

17 21. Although, in view of the circumstances, 100 percent equity financing
18 is not unreasonable per se, no evidence was provided in this proceeding that
19 Chronicle's method of financing construction and initial operation of its
20 cellular telephone facilities would meet any of the requirements of A.R.S.
21 §§40-301 and 40-302, would be cost-effective and would result in reasonable
22 capital costs for ratemaking purposes.

23 22. The FCC has explicitly found Chronicle to be legally, technically,
24 financially and otherwise qualified to construct and operate a cellular
25 telephone system.

26 23. Chronicle's proposed wholesale tariff sets forth its maximum rates
27 for access service to resellers and other cellular common carriers and includes
28 a provision which would permit changes in the rates to reflect discounts within

1 the range of 0 to 50 percent, on 14 days notice and filing with the Commission.

2 24. Chronicle's proposed wholesale tariff does not include an effective
3 price sheet containing its initial rate discounts.

4 25. Potential resellers of Chronicle's cellular telephone service must
5 have reasonable notice of the discounts to be applied, by an effective price
6 sheet, to individual tariffed services.

7 26. Chronicle's proposed tariff would provide 14 days notice of changes
8 in applicable discounts.

9 27. Chronicle projects only 35 "home market" customers in its first year
10 of operation.

11 28. Requiring a minimum resale block of 100 numbers, as originally
12 proposed by Chronicle, would effectively preclude resale.

13 29. Even a reduced minimum block, such as 25 numbers, would not allow
14 for more than one reseller during the initial year of Chronicle's operation,
15 although such a minimum would be more appropriate as the Gila RSA market
16 matures.

17 30. A minimum of 10 number and 20 hours of peak use during Chronicle's
18 first year of operation and a minimum of 25 numbers and 50 peak hours during
19 the second year would allow for more than one reseller and would be appropriate
20 during Chronicle's first two years of operation.

21 31. As initial rates for service in a competitive market, Chronicle's
22 proposed roamer rates are just and reasonable.

23 32. Staff recommended approval of the application by Chronicle, subject
24 to the filing of amendments to the proposed tariffs specifying roamer charges
25 for "affiliated" carriers (carriers with whom Chronicle may contract) or,
26 alternatively, filing with the Commission of any contracts entered into with
27 such carriers.

28 33. Staff also recommended that Chronicle file US West's interconnection

1 agreement for access service to Chronicle.²

2 34. Chronicle agreed with Staff's recommendations.

3 CONCLUSIONS OF LAW

4 1. Chronicle is a public service corporation within the meaning of
5 Article XV of the Arizona Constitution and A.R.S. §40-281.

6 2. The Commission has jurisdiction over Chronicle and of the subject
7 matter of the application.

8 3. There exists a public necessity for a cellular telephone system
9 within the Gila RSA.

10 4. Chronicle is a fit, willing and able party to provide such cellular
11 telephone service.

12 5. Chronicle should be granted a certificate authorizing it to
13 construct, operate and maintain cellular radio facilities for the provision of
14 telephone service as a common carrier with the Gila RSA, as authorized by the
15 FCC.

16 6. Prospective resellers of Chronicle services should receive at least
17 14 days notice of the actual effective price for each service.

18 7. Chronicle's proposed minimum resale block of numbers and
19 corresponding minimum usage is unjust and unreasonable and should be reduced to
20 a level allowing for competitive provision of resale to end-users of cellular
21 service with the Gila RSA.

22 8. Chronicle's proposed minimum resale block of numbers and usage
23 should be reduced to 10 numbers and 20 peak hours during its first year of
24 operation and should be 25 numbers and 50 peak hours thereafter until otherwise
25

26 2. In addition, since it is providing access service to Chronicle pursuant to
27 a special contract rather than its tariff, US West must file the contract
28 in accordance with A.R.S. §§40-365, 40-367 and 40-250(B) and presumably
will do so.

1 ordered by the Commission.

2 9. As initial rates for service and with 14 days notice of the initial
3 effective prices and the reduction in the minimum resale numbers and usage,
4 Chronicle's proposed initial rates are just and reasonable.

5 10. Chronicle should be granted permission to keep its books and records
6 in accordance with Part 32.

7 11. Nothing herein should be construed in any way as approval of or a
8 determination on the reasonableness of Chronicle's method of financing its
9 cellular telephone plant and operations.

10 12. Staff's recommendation that Chronicle file the interconnection
11 agreement with US West should be adopted.

12 ORDER

13 IT IS THEREFORE ORDERED that The Chronicle Publishing Company be, and
14 hereby is, granted a certificate of public convenience and necessity
15 authorizing it to construct, operate and maintain cellular radio communications
16 facilities for the provision of telephone service as a common carrier with the
17 Gila RSA.

18 IT IS FURTHER ORDERED that the certificate of public convenience and
19 necessity granted hereinabove, be and hereby is subject to the condition that
20 it is contingent upon, coextensive with and identical to the authority granted
21 to the Chronicle Publishing Company by the Federal Communications Commission.

22 IT IS FURTHER ORDERED that The Chronicle Publishing Company shall
23 promptly notify the Arizona Corporation Commission of any changes in its
24 cellular geographic service area, as authorized by the Federal Communications
25 Commission, by filing for inclusion in its tariff revised service area maps, in
26 accordance with the provisions of A.R.S. §40-367.

27 IT IS FURTHER ORDERED that The Chronicle Publishing Company shall file
28 with the Arizona Corporation Commission and serve upon all parties of record

1 herein, an initial pricing sheet covering all tarified services, at least 14
2 days prior to initiating service, but in no event later than September 1, 1990.

3 IT IS FURTHER ORDERED that The Chronicle Publishing Company shall amend
4 its proposed tariffs consistent with our discussion, findings and conclusions
5 hereinabove and shall include in its amended tariff a map of its cellular
6 geographic service area, as authorized by the Federal Communications
7 Commission.

8 IT IS FURTHER ORDERED that said tariff, as modified, shall be filed with
9 the Arizona Corporation Commission on or before August 1, 1990.

10 IT IS FURTHER ORDERED that The Chronicle Publishing Company shall be, and
11 hereby is, authorized and directed to follow the Uniform System of Accounts set
12 forth in 47 CFR Part 32, as of the effective date hereof, and not including any
13 later amendments or editions, for its cellular telephone operations.

14 IT IS FURTHER ORDERED that this Decision shall become effective
15 immediately.

16 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

17 *[Signature]* *[Signature]*
18 CHAIRMAN COMMISSIONER COMMISSIONER

19 IN WITNESS WHEREOF, I, JAMES MATTHEWS, Executive
20 Secretary of the Arizona Corporation Commission,
21 have hereunto set my hand and caused the
22 official seal of this Commission to be affixed
23 at the Capitol, in the City of Phoenix, this 19
24 day of July, 1990.

23 *[Signature]*
24 JAMES MATTHEWS
Executive Secretary

25 DISSENT
26 CKH/djp

27
28

BEFORE THE ARIZONA CORPORATION COMMISSION

DOCKETED

JUL 19 1990

MARCIA WEEKS
CHAIRMAN
RENZ D. JENNINGS
COMMISSIONER
DALE H. MORGAN
COMMISSIONER

DOCKETED BY

DOCKET NO. U-2551-90-055

DECISION NO.

57032

IN THE MATTER OF THE APELICATION OF)
CENTURY YUMA CELLULAR CORP. FOR A)
CERTIFICATE OF PUBLIC CONVENIENCE AND)
NECESSITY TO CONSTRUCT AND OPERATE A)
CELLULAR SYSTEM TO SERVICE THE YUMA,)
ARIZONA RURAL SERVICE AREA AND FOR)
APPROVAL OF ITS WHOLESALE TARIFF.)

OPINION AND ORDER

DATE OF HEARING: June 25, 1990

PLACE OF HEARING: Phoenix, Arizona

PRESIDING OFFICER: Cheryl K. Hachman

APPEARANCES: BROWN & BAIN, by Mr. Lex J. Smith, on behalf of
the Applicant, Century Yuma Cellular Corp.;

JOHNSTON, MAYNARD, GRANT & PARKER, by Mr. Michael M.
Grant, on behalf of the Yuma, Arizona RSA
Limited Partnership, and

Ms. Elizabeth A. Kushibab, Attorney, Legal Division,
Arizona Corporation Commission, on behalf of the
Utilities Division of the Arizona Corporation
Commission.

BY THE COMMISSION:

FINDINGS OF FACT

1. On March 2, 1990, Century Yuma Cellular Corp. ("Century Yuma"), a
Delaware corporation authorized to do business in Arizona, filed with the
Arizona Corporation Commission ("Commission" or "ACC") an application for a
certificate of public convenience and necessity ("certificate") authorizing it
to construct, operate and maintain cellular radio facilities for the provision
of telephone service, as a common carrier, in an area of defined by the Federal
Communications Commission ("FCC") as the Yuma, Arizona Rural Service Area, RSA
AZ-4, Cellular Market No. 321A (the "Yuma RSA"), which consists of Yuma and La

1 Paz Counties, Arizona.

2 2. Notice of Century Yuma's application and the hearing thereon was
3 published in a newspaper of general circulation in the Yuma RSA on June 13,
4 1990.

5 3. On June 18, 1990, the Yuma, Arizona RSA Limited Partnership (the
6 "Yuma Partnership")¹ filed an application to intervene as a party, which was
7 not opposed by Century Yuma and granted by the Presiding Officer at the hearing
8 on June 25, 1990.

9 4. The FCC has previously found that a public need exists for cellular
10 telephone service throughout the country, including the Yuma RSA.

11 5. On March 28, 1989, the FCC issued a construction permit authorizing
12 construction of cellular facilities in the Yuma RSA to Bay Cellular Limited
13 Partnership, and on October 12, 1989 it granted its consent to the assignment
14 of that permit to Century Yuma.

15 6. Under the FCC's regulations, Century Yuma must obtain a certificate,
16 complete construction of a cell site and begin providing service in an
17 FCC-approved cellular geographic service area ("CGSA") within the Yuma RSA by
18 September 28, 1990.

19 7. Initially, Century Yuma intends to provide cellular telephone
20 service, via two cell sites, within approximately a 30-mile radius of Yuma,
21 Arizona, and within approximately one year it intends to expand its coverage by
22 approximately another 20 to 30 miles east of the initial coverage area, along
23

24 1. The FCC has determined that the market of the cellular telephone industry
25 will be a duopoly of primary carriers in each service area: a "Type A" or
26 "nonwireline" licensee and a "Type B" or "wireline licensee. The Yuma
27 Partnership is the wireline licensee in the Yuma RSA and has a pending
28 application for a certificate (Docket No. U-2555-90-093).

1 Interstate 8.

2 8. Due to the nature of the Yuma market, Century Cellular expects that
3 it will probably have only two wholesale customers (itself and, until its
4 cellular facilities are constructed, the Yuma Partnership) and that most of its
5 revenues will be generated by its retail sales to end users.²

6 9. Century Yuma has agreed to provide wholesale service to the Yuma
7 Partnership and will enter into an NXX placement agreement to meet the
8 Partnership's service requirements.

9 10. Century Yuma estimates that it will provide service to approximately
10 458 retail customers during the first year of operation and that by the end of
11 the fifth year it will provide service to approximately 3,318 customers.

12 11. Century Yuma has developed plans for the cellular system design,
13 maintenance and operation, and preliminary arrangements have been made for the
14 location of cell sites and a mobile telephone switching office.

15 12. Century Yuma will not require a franchise for the use of public
16 streets, highways and rights-of-way for cellular facilities.

17 13. For the land-line portion of its service (local, intralata,
18 interlata and interstate) Century Yuma has entered into an interconnection
19 agreement with The Mountain States Telephone and Telegraph Company, dba US West
20 Communications ("US West") and will pay access charges to US West pursuant to
21 that agreement.

22

23 2. It appears that the four existing certificated cellular carriers in
24 Arizona provide retail service to end users either indirectly, through a
25 reseller affiliate, or directly, by "purchasing" their own wholesale
26 service at their tariffed rates and "reselling" that service. To minimize
27 its costs, Century Yuma has chosen the latter approach and its service to
28 end users will be provided by an operating division. In light of the
formative nature of the cellular industry in rural areas, Century Yuma's
understandable desire to minimize its costs during its start-up years, and
the absence of any request or recommendation that we require a separate
affiliate, we will not require use of a separate reseller affiliate for
retail service to end users at this time.

1 14. If granted a certificate, Century Yuma will familiarize itself with
2 the statutes governing public service corporations and the rules and
3 regulations of this Commission and intends to abide by them.

4 15. If the Commission permits it to do so, Century Yuma will maintain
5 its books and records in accordance with the FCC's new Uniform System of
6 Accounts ("Part 32"); otherwise it will use the old accounting system ("Part
7 31").

8 16. If granted a certificate, Century Yuma will file annual reports and
9 maintain its records so that its wholesale revenues, expenses and other
10 pertinent data can be readily determined when necessary.

11 17. If granted a certificate, Century Yuma will begin construction of
12 its cellular facilities immediately so that it can complete construction before
13 its FCC construction permit expires.

14 18. Century Yuma is a fourth-tier, wholly-owned subsidiary of Century
15 Communications Corp. ("Century"), a holding company which, through
16 subsidiaries, indirectly owns and operates cable television systems in various
17 locations throughout the country, including Yuma, Arizona, and 10 cellular
18 telephone systems in five states (including two cellular systems under
19 construction in Virginia).

20 19. Primarily due to the acquisition of cable television and new
21 cellular telephone systems, increased depreciation for those systems and
22 increased interest expense due to the issuance of debt to finance the
23 acquisitions, Century incurred net losses in 1987 (\$977,000), 1988 (\$4,450,000)
24 and 1989 (\$35,556,000) and expects the net losses to continue until such time
25 as its recently acquired cable television and cellular telephone systems
26 generate sufficient earnings to offset the cost of acquiring and operating
27 them.

28 20. At December 31, 1989, approximately 89 percent of Century's total

1 (consolidated) assets were financed by long-term debt, and, except for \$1,000
2 of common equity, Century Yuma will be financed entirely with debt capital
3 provided by its immediate parent, Century Cellular Corp., a third-tier
4 subsidiary of Century.

5 21. Century Cellular Corp. has entered into a credit agreement with
6 eight banks for up to \$250 million of debt financing for construction and
7 initial operation of cellular telephone systems and has agreed to make all
8 necessary funds available for the construction and operation of Century Yuma's
9 cellular system from that credit agreement.³

10 22. In connection with the application for assignment of the
11 construction permit, Century Yuma provided financial information to the FCC,
12 and when the FCC consented to the assignment, it implicitly found that Century
13 Yuma is financially, as well as technically, qualified to construct and operate
14 a cellular telephone system.

15 23. In essence, Century Yuma's witness testified that the practical
16 equivalent of 100 percent debt financing is available to new cellular telephone
17 systems because of the high probability of successful operations (hence low
18 business risk) after the initial start-up years.

19 24. No evidence was provided in this proceeding that Century Yuma's
20 method of financing the acquisition of a construction permit and the
21 construction and initial operation of cellular telephone facilities (i.e.,
22 exclusive reliance on debt financing) would meet any of the requirements of
23 A.R.S. §§40-301 and 40-302, is cost-effective and would result in reasonable
24

25 3. The credit agreement with the banks required Century to infuse \$35 million
26 of equity into all of its cellular operations, but none of that equity
27 infusion has been specifically attributed to Century Yuma (Tr. at 48).
28

1 overall capital costs for ratemaking purposes.

2 25. Century Yuma's proposed wholesale tariff sets forth its maximum
3 rates for access service to resellers and includes a provision which would
4 permit changes in the rates to reflect discounts within the range of 0 to 50
5 percent, on 15 days notice and filing with the Commission.

6 26. Century Yuma's proposed maximum rates were not designed to recover
7 its cost of service (i.e., its wholesale gross annual revenue requirement) but
8 are based on and substantially similar to the maximum wholesale rates charged
9 by other cellular telephone companies, including companies in Arizona.

10 27. Century Yuma's proposed wholesale tariff does not include an
11 effective price sheet containing its initial rate discounts, but Century Yuma
12 does intend to discount its maximum wholesale rates in order to promote demand
13 for retail service.

14 28. With the maximum rates and discounts, Century Yuma expects that its
15 cellular operations will not provide a positive cash flow for at least the
16 first three years of operation and will not provide a return (net operating
17 income) until the fifth year of operation.

18 29. According to Century Yuma's witness, negative cash flows and net
19 operating losses are typically experienced by cellular telephone systems during
20 their initial, start-up years until, due to demand for the service and customer
21 growth, revenues are sufficient to cover the cost of providing service.

22 30. Century Yuma's proposed wholesale tariff does not include terms,
23 conditions and rates for "roamer service", a service provided to other
24 wholesale cellular carriers for resale to their resellers and retail customers,
25 so that an end user can use his cellular service in more than one cellular
26 service area.

27 31. At the hearing, the Commission's Utilities Division ("Staff")
28 recommended that the Commission grant Century Yuma's application for a

1 certificate and approve Century Yuma's proposed tariff with the following
2 modifications: (1) inclusion of terms, conditions and rates for roamer service
3 to other wholesale cellular carriers; and (2) inclusion of a provision in
4 Section III (I)(2) of the tariff which requires Century Yuma to return a
5 customer's security deposit (by either a credit or refund), when the customer
6 has paid for 24 months of continuous service with no payment delinquencies.

7 32. Staff also recommended that Century Yuma file US West's
8 interconnection agreement for access service to Century Yuma and all future
9 interconnection agreements with land-line carriers.⁴

10 33. Century Yuma agreed with Staff's recommendations.

11 34. On July 5, 1990, Century Yuma filed the interconnection agreement
12 with US West.

13 CONCLUSIONS OF LAW

14 1. Century Yuma is a public service corporation within the meaning of
15 Article XV of the Arizona Constitution and A.R.S. §40-281.

16 2. The Commission has jurisdiction over Century Yuma and of the subject
17 matter of the application.

18 3. There exists a public necessity for a cellular telephone system
19 within the Yuma RSA.

20 4. Century Yuma is a fit, willing and able party to provide such
21 cellular telephone service.

22 5. Century Yuma should be granted a certificate authorizing it to
23 conduct, operate and maintain cellular radio facilities for provision of
24 telephone service as a common carrier within the Yuma RSA, as authorized by the
25

26 4. In addition, since it is providing access service to Century Yuma pursuant
27 to a special contract rather than its tariff, US West must file the
28 contract in accordance with A.R.S. §§40-365, 40-367 and 40-250(B) and
presumably will do so.

1 FCC.

2 6. As unopposed initial rates for service and with the modifications
3 recommended by Staff, Century Yuma's rates and charges for wholesale cellular
4 telephone service are just and reasonable.

5 7. Century Yuma should be granted permission to keep its books and
6 records in accordance with Part 32.

7 8. Nothing herein should be construed in any way as approval of or a
8 determination on the reasonableness of Century Yuma's method of financing its
9 cellular telephone plant and operations.

10 9. Staff's recommendation that Century Yuma file the interconnection
11 agreement with US West has been satisfied.

12 10. Staff's recommendation that Century Yuma file all future
13 interconnection agreements with land-line carriers was not opposed and should
14 be adopted.

15 ORDER

16 IT IS THEREFORE ORDERED that Century Yuma Cellular Corp. be, and hereby
17 is, granted a certificate of public convenience and necessity authorizing it to
18 construct, operate and maintain cellular radio communications facilities for
19 the provision of telephone service as a common carrier within the Yuma RSA.

20 IT IS FURTHER ORDERED that the certificate of public convenience and
21 necessity granted hereinabove be, and hereby is, subject to the condition that
22 it is contingent upon, coextensive with and identical to the authority granted
23 to Century Yuma Cellular Corp. by the Federal Communications Commission.

24 IT IS FURTHER ORDERED that Century Yuma Cellular Corp. shall promptly
25 notify the Arizona Corporation Commission of any changes in its cellular
26 geographic service area, as authorized by the Federal Communications
27 Commission, by filing for inclusion in its tariff revised service area maps, in
28 accordance with the provisions of A.R.S. §40-367.

1 IT IS FURTHER ORDERED that Century Yuma Cellular Corp. shall modify its
2 proposed wholesale tariff as follows:

3 A. Section III (I) should be revised to include a
4 provision requiring return of a customer's security
5 deposit, via a credit or refund, when the customer has not
6 been delinquent in its payments for 24 continuous months.

7 B. The tariff should contain the terms, conditions and
8 rates for the provision of roamer service.

9 C. The tariff should contain a price sheet setting forth
10 effective initial discounts which are within the range
11 permitted by Section IV (A) of the tariff.

12 D. The tariff should include a map of the cellular
13 geographic service area, as approved by the Federal
14 Communications Commission, and depict thereon the actual
15 coverage area.

16 IT IS FURTHER ORDERED that said tariff, as modified, shall be filed with
17 the Arizona Corporation Commission on or before August 1, 1990 and shall become
18 effective in accordance with the provisions of A.R.S. §§ 40-367 and 40-250(B).

19 IT IS FURTHER ORDERED that Century Yuma Cellular Corp. shall be, and
20 hereby is, authorized and directed to follow the Uniform System of Accounts set
21 forth in 47 CFR Part 32, as of the effective date hereof, and not including any
22 later amendments or editions.

23 IT IS FURTHER ORDERED Century Yuma Cellular Corp. file herein any future
24 interconnection agreement it may enter into within 30 days of the date the
25 agreement is signed.
26
27
28